

## **ADDENDUM to CONTRACT of PURCHASE of WASTE INCINERATOR**

Vendor: Waste Reduction Technologies, L.L.C

Purchaser: The City of Jonesboro

Date: \_\_\_\_\_

### **TERMS AND CONDITIONS OF SALE**

1. **Applicable Law- Definitions:** The interpretation of these Terms and Conditions of Sale (the “**Terms**”), the foregoing “Contract of Purchase of Waste Incinerator” (the “**Contract of Purchase**”), and the rights of the parties hereto shall be construed under and governed by the laws of the State of Arkansas, U.S.A.; “**Vendor**” when used herein means Waste Reduction Technologies, L.L.C.; “**Purchaser**”, when used herein means the person or entity to whom the Contract of Purchase is addressed; and “**Incinerator**” means the waste incinerator and associated equipment, parts, components materials and services described in the Contract of Purchase.
2. **Agreement:** When accepted, these Terms, together with the Contract of Purchase, represent the entire agreement of the parties and supersede any prior drafts or discussions. These Terms and the Contract of Purchase may not be amended, and any rights or obligations created hereunder or in the Contract of Purchase may not be waived or altered, except by an instrument in writing signed by both Vendor and Purchaser. In the event of any conflict between the Contract of Purchase and these Terms, these Terms shall control.
3. **Acceptance:** The Contract of Purchase and these Terms are Vendor’s offer of sale of the Incinerator and may only be accepted by Purchaser in conformity with the terms set forth herein. This offer may be accepted by Purchaser by acceptance of the Incinerator or by executing the Contract of Purchase in the space provided thereon. Acceptance is expressly made conditional to Purchaser's assent solely to the terms and conditions contained in these Terms and in the Contract of Purchase, and acceptance of any part of the Incinerator delivered by Vendor shall be deemed to constitute such assent by Purchaser. Vendor rejects all additional or different terms proposed by Purchaser or not contained in the Terms or the Contract of Purchase. No waiver, alteration or modification of, or additions to the terms and conditions contained herein or in the Contract of Purchase shall be binding unless expressly agreed to in writing, as set forth in Paragraph 2, above.
4. **Price and Terms of Payment:** Unless otherwise specified in writing by Vendor, the price of the Incinerator and the terms of payment for the Incinerator will be those prices and terms of payment set forth herein and/or in the Contract of Purchase. Vendor's prices do not include sales, use, or similar taxes. Purchaser shall be responsible for all sales, use, or similar taxes, unless Purchaser provides Vendor with a valid tax exemption certificate acceptable to the relevant taxing authorities. All payments shall be by certified check or bank transfer. If Purchaser fails to abide by any term of payment, Vendor may, at its sole discretion, and in addition to and without limitation of any other rights and remedies available to Vendor, either terminate any agreement between Vendor and Purchaser, or suspend any further deliveries to Purchaser until Purchaser cures any and all defaults of these Terms or the Contract of Purchase.
5. **Delivery:** Title and risk of loss or damage for the Incinerator shall pass to Purchaser upon acceptance and installation. When any delay in delivery or any performance hereunder is caused by Purchaser or a Force Majeure, as defined herein, Vendor shall be reimbursed for the time and expenses, per Vendor's standard rates, caused by such delay.

6. **Force Majeure:** Vendor shall not be liable for any failure to perform obligations under any agreement with Purchaser if prevented to do so by a cause beyond the reasonable control and without the fault or negligence of such party. Without limiting the generality of the foregoing, such causes include, but are not limited to, acts of God, the public enemy, fires, floods, storms, epidemics, earthquakes, riots, civil disobedience, acts of terrorism, embargoes, strikes or other acts of workmen, casualties or accidents resulting in the delay of any deliveries, shortages of vehicles, shortages or fuel, shortages of power, shortages of labor, shortages of material, war or war-like operations, or restraint of government. Both parties have an obligation to immediately notify the other in writing of an event of Force Majeure, which would prevent or delay its performance. Said notice shall contain a description of the Force Majeure and the expected period of delay.

7. **Limited Warranty:**

- A. Vendor will, in its sole discretion, repair or replace any Incinerator identified in the Contract of Purchase that were manufactured by Vendor and found, within a period of one (1) year following the date of acceptance of the Incinerator to the F.O.B. shipping point, to be defective in materials or workmanship.
- B. Vendor does not warrant any Incinerator, equipment, materials, or products of any kind supplied, but not manufactured, by Vendor. However, the manufacturer's warranty, if any, on such equipment, materials, or products shall be assigned to Purchaser upon acceptance of these Terms and the Contract of Purchase. On any such Incinerator, equipment, materials, or products, Vendor makes no separate or additional express or implied warranties. Vendor, at its sole discretion and without assuming any obligation, may act as a mediator between the manufacturer and the Purchaser in the event of a warranty dispute.
- C. Vendor's obligations hereunder are subject to the following conditions:
  - i. Purchaser must notify Vendor in writing of any defect within thirty (30) days after such defect becomes apparent. In such writing, Purchaser must provide all available particulars in connection with the defect.
  - ii. Purchaser must grant Vendor reasonable access to the location of the Incinerator to allow Vendor the opportunity to assess the condition of the Incinerator.
  - iii. Purchaser must have installed (if applicable), operated and maintained all of the Incinerator, including those Incinerator or any portion thereof that do not contain any defect, strictly in accordance with Vendor's installation, operating, and maintenance instructions.
  - iv. The defect was caused solely by faulty materials or workmanship for which Vendor was responsible, and was not due to any other cause, including, but not limited to, erosion, corrosion, damage or deterioration resulting from the installation, operation, or maintenance of the equipment not in accordance with Vendor's instructions, accident, damage during shipping, neglect, misuse or abuse, overuse, unauthorized modifications or repairs, improper storage, ingestion of foreign materials, exposure to natural disaster, inclement weather or any other detrimental or potentially detrimental conditions, or failure to make the defective Incinerator available to Vendor or any third party authorized by Vendor to observe, repair, or replace the defective Incinerator.
- D. Should Vendor elect to repair the defective Incinerator in lieu of replacing them, Vendor, or a third party of Vendor's choice, may repair the defective Incinerator, or the defective part or system thereof, either on site, if feasible, at its facility, or at any repair center selected by Vendor in its sole discretion. Any and all costs relating to the removal,

transportation, or reinstallation of the defective Incinerator are not covered by this warranty and shall be borne by Vendor.

- E. THE FOREGOING SETS FORTH VENDOR'S ONLY OBLIGATIONS, EXCEPT AS TO TITLE, AND PURCHASER RECOGNIZES THAT ITS EXCLUSIVE REMEDY IS FOR BREACH OF THE ABOVE WARRANTY, AND HEREBY WAIVES ALL THEORIES RELATING TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORIES. BY ACCEPTING THE INCINERATOR, PURCHASER FURTHER RECOGNIZES THAT VENDOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHATSOEVER, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST REDHIBITORY DEFECTS, AND PURCHASER ACKNOWLEDGES AND AGREES THAT ANY SUCH WARRANTIES, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST REDHIBITORY DEFECTS, ARE HEREBY DENIED AND EXCLUDED. PURCHASER EXPRESSLY WAIVES THE WARRANTY OF FITNESS IT MAY HAVE IN REDHIBITION OR TO A REDUCTION OF THE PURCHASE PRICE PURSUANT TO LOUISIANA CIVIL CODE ARTICLES 2520 THROUGH 2548 INCLUSIVE IN CONNECTION WITH THE INCINERATOR.
- F. IN NO EVENT SHALL VENDOR BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOSS OF PROFITS, LOSS OF USE, OR OTHER DAMAGES (WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHER THEORIES AND WHETHER VENDOR WAS AWARE OR COULD FORESEE THAT ANY SUCH DAMAGE MIGHT ARISE) ARISING OUT OF THESE TERMS, THE CONTRACT OF PURCHASE, OR ANY AGREEMENT BETWEEN THE PARTIES HERETO, OR THE USE OF ANY INCINERATOR PROVIDED TO PURCHASER BY VENDOR. VENDOR'S SOLE OBLIGATIONS SHALL BE THE REPAIR OR REPLACEMENT OF THE INCINERATOR, SUBJECT TO THE EXCLUSIONS AND LIMITATIONS SET FORTH HEREIN.

8. **Installation:**

- A. Vendor shall install the Incinerator at Purchaser's location within the period of time specified in the Contract of Purchase.
- B. Vendor shall provide operating manuals, instruction and adequate training for the proper operation and maintenance of the Incinerator.
- C. Vendor shall supervise the start up, initial operation and testing of the Incinerator and, to the extent required by governmental agencies, Vendor shall demonstrate full compliance with the attached permit. If third Party testing and verification is required for approval, this shall be at Vendor 's expense.
- D. Vendor shall be responsible for the payment of all subcontractors engaged by Vendor, if any, and all utility connections for the assembly and operation of the Incinerator. Vendor shall promptly pay for all labor and materials required for the fabrication and installation of the Incinerator and shall indemnify and hold harmless PURCHASER from any claims or liens of any unpaid vendors, laborers or subcontractors who provided any services or materials for the fabrication and installation of the Incinerator.

9. **Inventions and Patents:** Vendor grants no license by reason of any sale under any patent rights it may now own or hereafter acquire except the right to use the Incinerator sold hereby for the purpose for which they are sold under such patent rights, only as they cover said Incinerator as sold by Vendor. All drawings, novel techniques, special tooling and inventions made or acquired by Vendor or its agents or employees in the fulfillment of this Contract of Purchase shall be the property of Vendor regardless of whether any order document states a separate price item for tooling or engineering. Purchaser agrees to indemnify and hold Vendor harmless from and against any expense or loss from infringement of patents designs, specifications, or instructions in the manufacture of the Incinerator or their use in combination with other equipment or systems.

10. **Security:** Vendor reserves a security interest in the Incinerator sold hereunder and in all accessions to, replacements for, and proceeds of such equipment, until the full contract price, plus all other charges permitted hereunder, including any charges, costs or fees contemplated in the *Attorney's Fees* and *Venue and Jurisdiction* sections below, are paid in full by Purchaser. If so requested by Vendor, Purchaser shall execute all security agreements, financing statements, promissory notes and all other security documents requested by Vendor in the form determined by Vendor.

11. **Venue and Jurisdiction:** Each party irrevocably consents to the jurisdiction of the state courts located in Arkansas, and agrees that any action, suit or proceeding by or among the parties (or any of them) may be brought in any such court sitting in Arkansas, and waives any objection which it may now or hereafter have concerning jurisdiction and venue, whether based on considerations of personal jurisdiction, subject matter jurisdiction, forum non conveniens or on any other ground.

12. **Attorney's Fees:** In the event of any litigation, arbitration, judicial reference or other proceeding seeking to enforce any provision of these Terms or the Contract of Purchase, to enforce any remedy available upon default under these Terms or the Contract of Purchase, or a declaration of the rights of a Party under these Terms or the Contract of Purchase, the prevailing Party(ies) shall be entitled to recover from the other(s) such attorneys' fees and costs as may be reasonably incurred, including the cost of reasonable investigation, preparation and professional or expert consultation incurred by reason of such litigation, arbitration, judicial reference or other proceeding.

13. **Sound Levels:** The combined sound or noise levels produced by individual sound generating devices, and the exposure of workmen to such, will depend on Purchaser's plant noise levels over which Vendor has no control. Therefore, Vendor makes no guarantees, warranties or representations with respect to sound levels. If, after the Incinerator to be furnished hereunder are installed, it is determined that the system does not meet the maximum permissible sound levels or exposures, or that changes in OSHA requirements necessitate equipment modifications or additions, Vendor shall assist Purchaser in designing and providing equipment and materials required, provided that Purchaser agrees to pay the charges for this additional work and equipment.

14. **Design Criteria:** Vendor's Contract of Purchase is based upon design criteria supplied by Purchaser and Vendor assumes no responsibility for the accuracy of such criteria. Purchaser recognizes, and the parties hereto intend, that Vendor shall not be obligated to meet its performance guarantee hereunder if the actual design conditions are found to be different from those upon which Vendor's Contract of Purchase is based.

15. **Additions or Changes in the Work:** Purchaser agrees to pay Vendor reasonable charges for any additional work outside the scope of these Terms, the Contract of Purchase, or any agreement arising therefrom, regardless of the reason such additions or changes become necessary or are requested. However, said changes shall not be compensable unless authorized in writing.

16. **Termination and Cancellation:** In the event that Purchaser terminates or cancels all or any portion of its order, Purchaser shall compensate Vendor for all costs and expenses already incurred including, but not limited to, the price of any Incinerator or services required to fill said order already committed to by Vendor, a pro rata portion of the contract price representing work completed prior to such termination or cancellation and a reasonable allowance for overhead and profit.

17. **Miscellaneous:**

- A. These Terms and the Contract of Purchase, if accepted by Purchaser represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, letters and understandings relating to the subject matter hereof and cannot be amended, supplemented or modified except in writing signed by the party against whom the enforcement of any such amendment, supplement or modification is sought. In the event of any conflict between the Contract of Purchase and these Terms, these Terms shall control.
  
- B. Failure of Vendor at any time or times to require performance of any provision of these Terms or the Contract of Purchase shall in no manner affect its right to enforce the same, and a waiver by Vendor of any breach of any provision of these Terms or the Contract of Purchase shall not be construed to be a waiver by Vendor of any succeeding breach of such provision or a waiver by Vendor of any breach of any other provision.
  
- C. The rights, privileges, duties and obligations covered herein, including the transactions and agreements covered and contemplated hereby, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns provided, however, Purchaser may not assign any of its rights, privileges, duties or obligations hereunder without the prior written consent of Vendor, and any purported and attempted assignment without such written consent shall be null and void *ab initio*.